

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 75 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SIMPLEX RAYON & SILK PROCESSORS,

Appearance:

1. INCOME TAX REFERENCE No. 75 of 1990
MR TANVISH BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1
-

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following
question of law is referred by the Tribunal for the

opinion of this Court :-

"Whether, the Appellate Tribunal is right in law and on facts in deleting the disallowance of interest paid to HUF partner u/s. 40(b) of the I.T. Act ?"

2. The Income-tax Officer had disallowed under Section 40(b) the interest paid to the partners. That partner was a Hindu Undivided Family and the disallowance was made on the ground that a partial partition of that HUF took place after the amendment which nullified the effect of that partition. The Commissioner had confirmed that disallowance following his decision in the assessee's case for the assessment year 1980-81. In that decision, the Commissioner had followed two decisions of the Hyderabad Benches of the Tribunal. He had observed that the substance of those two decisions was that Section 171(4) had operation only for computing the income of the HUF and interest paid to the HUF could not be disallowed by applying Section 40(b). The Tribunal has taken the view that the assessee was entitled to the deduction of the interest paid and the disallowance was cancelled. Being aggrieved by the said order of the Tribunal, the revenue has come in reference to this Court.

3. We have heard Mr Tanvish Bhatt, learned standing counsel appearing for the department. No one appears on behalf of the respondent-assessee though the notice was duly served.

4. At the hearing of the reference, our attention was drawn to the decision of this Court in the case of Bhupendra Navnitlal & Co. vs. Commissioner of Income-tax, (1994) 209 ITR 972 wherein it is held as under :-

"In computing the business profits of the assessee-firm, the interest paid to an individual on monies advanced by him from his individual funds could not be disallowed on the ground that he was partner of the assessee-firm as a karta of a Hindu undivided family. When the assessee represents a Hindu undivided family, the interest paid to the Hindu undivided family has to be disallowed and not any interest paid to the assessee in his account for the advance made by him personally. Under Section 40(b) of the Income-tax Act, 1961, it is only the interest paid to the partner which is not allowed to be deducted."

5. Following the aforesaid judgment, our answer to the question is in the negative i.e. in favour of the revenue and against the assessee.

The reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)
sundar/-